

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

TWINSTRAND BIOSCIENCES, INC. &
UNIVERSITY OF WASHINGTON,

Plaintiffs,

v.

GUARDANT HEALTH, INC.,

Defendant.

C.A. No. 21-1126-GBW-SRF

**DEFENDANT GUARDANT HEALTH INC.’S MOTION FOR JUDGMENT
AS A MATTER OF LAW PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE
50(b) OR, IN THE ALTERNATIVE, NEW TRIAL PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 59**

Defendant Guardant Health, Inc. (“Guardant”) respectfully moves for judgment as a matter of law (“JMOL”) pursuant to Federal Rule of Civil Procedure 50(b), or in the alternative, a new trial pursuant to Federal Rule of Civil Procedure 59, on the following grounds:

- (1) Plaintiffs TwinStrand Biosciences, Inc. and University of Washington (collectively, “TwinStrand”) failed to present legally sufficient evidence that Guardant infringes any asserted claim of the asserted patents because Guardant does not practice any of the bioinformatics steps in the asserted claims—much less all of these steps, as required by law;
- (2) Even if Guardant performed all the claimed bioinformatics steps, there is no legally sufficient evidence that Guardant performs these steps in the order required by this Court’s claim constructions;
- (3) In addition to the above deficiencies in TwinStrand’s attempt to prove infringement for all Guardant products and services, Guardant services (Companion and Explore) cannot infringe any asserted claim of the asserted patents because use of the Guardant

services does not practice the claimed methods even under TwinStrand's infringement theory, and TwinStrand's own expert admitted at trial that use of the services is non-infringing;

- (4) TwinStrand failed to present legally sufficient evidence that any infringement was willful;
- (5) TwinStrand failed to present legally sufficient evidence to support the jury's damages award; and
- (6) In the alternative, and for the same reasons summarized above, the verdict is against the clear weight of the evidence and/or the prejudicial admission of inadmissible evidence produced an unlawful verdict, thus warranting a new trial that should extend to all issues in the case on which this Court has not otherwise granted JMOL.

The grounds for Guardant's motions are set forth in the accompanying brief.

Dated: March 4, 2024

OF COUNSEL

Mark Fowler (admitted *Pro hac vice*)
Susan Krumplitsch (admitted *Pro hac vice*)
Monica De Lazzari (admitted *Pro hac vice*)
Peiyao Zhang (admitted *Pro Hac Vice*)
DLA PIPER LLP (US)
3203 Hanover Street
Suite 100
East Palo Alto, California 94303-1123
Telephone: 650-833-2048
Facsimile: 650-687-1138
mark.fowler@us.dlapiper.com
susan.krumplitsch@us.dlapiper.com
monica.delazzari@us.dlapiper.com
peiyao.zhang@us.dlapiper.com

DLA PIPER LLP (US)

/s/ Jeff Castellano
Brian A. Biggs (DE Bar No. 5591)
Jeff Castellano (DE Bar No. 4837)
Erin E. Larson (DE Bar No. 6616)
1201 North Market Street, Suite 2100
Wilmington, DE 19801-3046
Telephone: (302) 468-5700
Facsimile: (302) 394-2341
brian.biggs@us.dlapiper.com
jeff.castellano@us.dlapiper.com
erin.larson@us.dlapiper.com

Attorneys for Defendant Guardant Health, Inc.

Ellen Scordino (admitted *Pro Hac Vice*)
Nancy C. Braman (admitted *Pro Hac Vice*)

DLA PIPER LLP (US)

33 Arch Street
26th Floor
Boston, MA 02110-1447
Telephone: 617-406-6085
ellen.scordino@us.dlapiper.com
nancy.braman@us.dlapiper.com

Tracy Block (admitted *Pro Hac Vice*)

DLA PIPER LLP (US)

1251 Avenue of the Americas
27th Floor
New York, NY 10020-1104
Telephone: (212) 335-4733
Facsimile: (917) 778-8733
tracy.block@us.dlapiper.com

Travis Jensen

ORRICK, HERRINGTON & SUTCLIFFE LLP

1000 Marsh Road
Menlo Park, CA 94025-1015
Telephone: (650) 614-7458
Facsimile: (650) 614-7401